***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NO.18812 of 2006

%14-12-2006

#Dasari Ganga Reddy. … PETITIONER

versus

$Government of Andhra Pradesh, represented by its Principal Secretary to Government, Panchayat Raj and Rural Development Department, at Secretariat, Hyderabad and three others. … RESPONDENTS

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!Counsel for Petitioner: Sri K.Raghuveer Reddy.

^Counsel for Respondents: G.P. for Panchayat Raj and Rural Development.

Sri Raghuveer.

? Cases referred
-NIL-

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.18812 of 2006

DATED 14.12.2006

Between:
Dasari Ganga Reddy. … PETITIONER

Versus

Government of Andhra Pradesh,
represented by its Principal
Secretary to Government, Panchayat
Raj and Rural Development Department,
at Secretariat, Hyderabad and three
others. … RESPONDENTS

WRIT PETITION NO.18812 of 2006

ORDER:

Heard Sri Raghuveer Reddy, learned counsel representing the writ petitioner and the learned Assistant Government Pleader for Panchayat Raj.

2. This Court ordered Notice Before Admission on 15.9.2006. Counter affidavit is filed on behalf of the respondents 1 and 2.

3. Sri Raghuveer Reddy, learned counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and would maintain that the Government is not justifying in interfering with the unanimous decision taken by the District Level Sand Committee. The learned counsel also would submit that such exercise of power, in the facts and circumstances, under the guise of Section 264 of A.P. Panchayat Raj Act, 1994 cannot be sustainable. The learned counsel also had drawn the attention of this Court to the subsequent events and would contend that in the light of the same, at least the petitioner can be permitted to operate through manual power and not adopting the mechanical means.

4. The learned Assistant Government Pleader for Panchayat Raj

on the contrary had taken this Court through the averments made in the counter affidavit and also would point out that it is not as though for the first time the writ petitioner is approaching this Court. The writ petitioner also filed Writ Petition No.23298 of 2003 and when the same was dismissed, the writ petitioner carried the matter by way of Writ Appeal, viz., W.A.No.2031 of 2003, wherein the liberty was given to the petitioner to apply for refund of the excess lease amount for the duration for which the appellant could not work. Hence, in the light of the said direction made by the appellate Court, the Writ Petition be disposed of giving liberty to the petitioner to make appropriate representation, if the petitioner is so advised. The learned counsel would submit that the Writ Appeal in fact was dismissed with the above observation.

5. The Writ Petition is filed for a Writ of Mandamus declaring the proceedings dated 15.7.2006 in Memo No.7355/Pts.III/A3/2006-1 on the file of the 1st respondent, as illegal, arbitrary and without jurisdiction by consequently directing the 2nd respondent to forthwith implement the resolution dated 22.12.2004 of the District Level Sand Committee, Nizamabad, and permit the petitioner to do sand quarrying, as ordered by 3rd respondent, for local use, or in the alternative, to refund the amount to the petitioner, which was paid at the time of entering into agreement in the year 2000, along with interest @ 24% P.A. and award costs and pass such other suitable orders.

6. It is stated that pursuant to the tender notice dated 6.9.2000 issued for conducting auctions in respect of sand reaches at Kaligote village in Nizamabad District, the petitioner participated in the said auction and he was the highest bidder having quoted Rs.2,40,100/- for a period of two years and the lease was granted for a period of two years commencing from 1.10.2000 to 30.9.2002 and the petitioner

deposited the entire amount of Rs.2,40,100/- and entered into agreement to that effect. It is also further stated that the area of Jakranpalli is involved in naxalite problem. PWG Naxalites have blasted the lorries of the petitioner in December, 2000 while he was carrying sand as per the agreement entered into with the respondents. The said naxalites had also warned the petitioner that he should not carry on sand quarrying operations. The matter was also complained to police and in that regard a case was also registered in crime No.74 of 2002 on the file of P.S. Jakranpalli (Nizamabad District) for the offences under Sections 147, 148, 435 read with Section 149 IPC and Section 25 of the Indian Arms Act. Thereafter the petitioner approached the 2nd respondent, who directed the petitioner not to carry on sand quarrying operations in view of the above problem. Accordingly, the petitioner did not quarry sand and the same is to the knowledge of the respondents and the entire people in the area. In view of the said problem at that point of time, the petitioner could not carry on sand quarrying operations in spite of paying the entire bid amount of Rs.2,40,100/- and in spite of entering into an agreement with the respondents. Hence, the petitioner made a representation to the 2nd respondent for compensating the lease period during which the petitioner was not allowed to do business by way of extending the lease period or to refund the amount paid by him. The said aspect was discussed in the meeting of District Level Committee held on 22.12.2004, wherein it was unanimously decided to grant quarrying permission to the petitioner for quarrying the sand by extending the lease by the period for which the petitioner could not do business. Meanwhile, in view of the drought situation in the District, the said Resolution of the District Level Committee could not be implemented and a decision was taken to refer the matter to the Deputy Director of

Ground Water Department, Nizamabad for surveying the area and submit a report for taking appropriate decision. The Deputy Director of Ground Water Department, vide proceedings dated 14.3.2005 had submitted his report recommending prohibition of sand quarrying in the area. Thereafter the petitioner made another representation on 18.11.2005 stating that there was excess rainfall in the area and hence the Resolution passed by the District Level Committee on 22.12.2004 be implemented. This aspect was once again referred to the Deputy Director of Ground Water Department, Nizamabad for survey and report and the Deputy Director of Ground Water Department conducted survey on 3.1.2006, basing on which the 3rd respondent, vide proceedings dated 6.3.2006, stated that area was over exploited, but stated that the sand can be quarried for local use in the villages/towns bordering the stream and directed the Deputy Director of Ground Water Department to communicate the same to the 2nd respondent. Accordingly on 16.3.2006, the Deputy Director of Ground Water Department had communicated the same to the 2nd respondent, and the petitioner once again made representation on 21.3.2006 for permitting him to quarry sand as per the Resolution of the District Level Committee and the order of 3rd respondent wherein permission was granted for quarrying sand for local use. The 2nd respondent, without taking a decision on the said aspect, had referred the matter to the 1st respondent on 21.4.2006. The 1st respondent, by order dated 15.7.2006, held that sand quarrying should not be permitted for the balance period and the proposal of the petitioner was rejected. It is stated that the order of the 1st respondent is illegal and arbitrary since the 1st respondent has no jurisdiction to pass such order more so when a Resolution was passed by the District Level Committee and by

the competent authority without setting aside the Resolution of the District Level Committee. It is also stated that the petitioner had parted with the entire amount of Rs.2,40,100/- in the year 2000 itself and even after a lapse of six years, the petitioner is unable to do business. The respondents are neither returning the amount nor permitting the petitioner to carry on sand quarrying. It is also stated that for extraneous reasons, the representation of the petitioner had been rejected, and several other factual details also had been narrated in the affidavit filed in support of the Writ Petition.

7. The order dated 15.7.2006 in Memo No.7355/pts.III/A3/2006-1, which is impugned in the present Writ Petition, reads as hereunder:

> "The attention of the District Collector (PW) Nizamabad District is invited to the reference cited and he is informed that the proposal has been examined with reference to the report of the Ground Water Department and the rules issued in GO Ms.No.1, Industries & Commerce Department, dated 1.1.2001 and it is found that there are no valid reasons to consider the request of the lease holder namely Sri D.Ganga Reddy to accord permission for the balance period. Hence the proposal is hereby rejected".

8. In paragraph 3 of the counter affidavit it is stated that the petitioner approached the 2nd respondent on 3.12.2002, i.e., after expiry of the lease period to grant permission to auction sand. Since the petitioner had approached the 2nd respondent after expiry of lease period, no orders had been issued to carry the sand quarry operation. It is stated that the writ petitioner had filed Writ Petition No.23298 of 2003 before this Court for extension of lease period in respect of Kaligote Sand Reach, but this Court had dismissed the said Writ Petition on 5.11.2003 on the ground of laches and no relief was granted. It is further stated that against the said order, the writ

petitioner carried the matter by way of Writ Appeal in Writ Appeal No.2031 of 2003 and the same had also been dismissed on 24.11.2003 with the observation that no permission would be required for making a representation before the authorities for the refund of excess lease amount for the duration for which the applicant could not work on the quarry, It is also stated that the writ petitioner had submitted application before the Chairman, District Level Sand Committee, Nizamabad, requesting to consider for extension of lease or for refund of the amount proportionately, and the District Level Committee in its meeting held on 22.12.2004 had resolved to extend the lease period for which he had not carried the sand quarry. The Deputy Director, Ground Water Department, Nizamabad, had been asked to submit his report with regard to ground water situation of the Kaligote village, and the Deputy Director, Ground Water Department, Nizamabad had submitted a report vide letter No.457/T4/SM/2001, dated 14.3.2005 stating that the Kaligote village of Jakranpalli Mandal comes under over exploited village. It is stated that as per APWALTA Rules, over exploited villages are banned for sand mining. The writ petitioner had again submitted application on 16.11.2005 for extension of lease period. The Deputy Director, Ground Water Department, Nizamabad, in his letter No.391/T4/SM/2005, dated 16.3.2006 had informed that the Director, Ground Water Department, Hyderabad, had permitted to excavate the sand for local use. The Director, Ground Water Department, Hyderabad, in his Memo No.10748/Hg.II/2/2005, dated 6.3.2006 had stated that Kaligote village shows that it is an over exploited village and the same has been notified in the Gazette. As per provisions of APWALTA Rule 23(1a) of APWALTA sand mining shall not be permitted in notified areas except for local use in the village or towns bordering the streams and transportation of sand from

this notified area through mechanical means out of local jurisdiction shall be banned. It is also further in paragraph 4 of the counter affidavit that the Government is having power to review or revise any order passed by the Gram Panchayat, Mandal Parishad, Zilla Parishad or any authority. Section 264 of A.P. Panchayat Raj Act, 1994 dealing with power of review and revision by Government, specifies as hereunder:

> "(1) The Government may, either *suo motu* or on application from any person interested, call for and examine the record of Gram Panchayat, Mandal Parishad or a Zilla Parishad or of its Standing Committees or of any authority, Officer or person, in respect of any proceeding or the correctness, legality or propriety of any decision or orders passed therein and, if in any case, it appears to the Government that any such decision or order should be modified, annulled or reversed, or remitted for reconsideration, they may pass orders accordingly.
>
> Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.
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> (2) The Government may stay the execution of any such decision or order pending exercise of their powers under sub-section (1) in respect thereof:
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> (3) The Government may *suo motu* at any time or on an application received from any person interested within ninety days of the passing of an order under sub-section (1), review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The proviso to sub-section (1) and in sub-section (2) shall apply in respect of any proceeding under this sub-section as they apply to a proceeding under sub-section (1).
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> (4) Every application preferred under sub-section (1) shall be accompanied by a fee of fifteen rupees".

Further specific stand is taken that inasmuch as the writ petitioner

already had submitted applications either for refund of amount for the said period, in case the writ petitioner submits his application before the District Level Sand Committee for refund of the lease amount together with the evidence of the period for which he could not transact the sand mining, the Committee would look into the same and would take proper decision in relation thereto. Further specific stand is also taken that the 3rd respondent had submitted a report to permit the sand mining for local use and the sand for local use has to be mined manually without mechanical means and in the instant case, it is proposed to quarry the sand by mechanical means.

9. The order impugned dated 15.7.2006 already had been referred to supra. Different representations and different proceedings inclusive of the unanimous decision to extend the lease are placed before this Court. Further, the writ petitioner herein had filed Writ Petition No.23298 of 2003 being aggrieved of non-consideration of his representation dated 3.12.2002 for extension of lease period and a learned Judge of this Court by order dated 5.11.2003, on the ground of laches, had dismissed the said Writ Petition and the same was carried by way of Writ Appeal in WA No.2031 of 2003 and the Division Bench of this Court by order dated 24.11.2003 made the following order:

> "Learned counsel for the appellant contends that appellant may be granted liberty to apply for refund of excess lease amount for the duration for which appellant could not work on the quarry. No permission would be required for making such representation since no such claim is made in the Writ Petition. Writ Appeal is dismissed".

No doubt certain submissions are made by the learned counsel representing the writ petitioner that even subsequent to the passing of these orders by the learned single Judge and also by the learned Division Bench referred to supra, much water had flown and in the light

of the subsequent events since there is no impediment at present to consider the case of the petitioner favourably at least to carry on the sand quarrying operations by adopting the manual means, the petitioner may be permitted to carry on with such operations for the said period. It is no doubt true that certain subsequent events are brought to the notice of this Court, but from the beginning the petitioner has been making two alternative prayers either to permit him to operate for the rest of the period or at least to order refund of the excess amount, i.e., for the period during which the petitioner could not operate. In the light of the order made in the Writ Appeal referred to supra, this Court is of the considered opinion that it would be just and proper especially keeping in view there is sufficient lapse of time in between to give liberty to the petitioner to make appropriate representation praying for refund of the amount for the period the petitioner could not work, the 4th respondent-District Level Sand Committee to consider the same in accordance with law and pass appropriate orders at the earliest point of time. The writ petitioner requests two weeks time to make such representation. Accordingly two (02) weeks time is hereby granted to the petitioner to make such representation and thereafter the 4th respondent-District Level Sand Committee to dispose of the same in accordance with law within a period of three (03) months thereafter.

10. With the above direction, the Writ Petition is disposed of. No costs.

14.12.2006

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